

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

TERESSA R. CALHOUN

v.

STEARNS LENDING, LLC, ET AL.

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Civil Action No. 4:19-CV-55  
(Judge Mazzant/Judge Nowak)

## **MEMORANDUM ADOPTING IN PART REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On February 1, 2019, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Plaintiff's Amended Emergency Motion for Preliminary Injunction (Dkt. #9) be denied.

On January 24, 2019, Plaintiff filed her original Emergency Motion seeking "a 250-day preliminary injunction to stop the foreclosure" of the real property at: 1716 Megan Creek Drive, Little Elm, Texas 75068 (the "Property"), scheduled for February 5, 2019 (Dkt. #4). The Court found that the original Emergency Motion likely failed to sufficiently allege the requirements necessary for issuance of an ex-parte temporary restraining order and thus permitted Plaintiff an opportunity to correct any potential deficiencies before the Court took up her requests for injunctive relief. On January 29, 2019, Plaintiff filed her Amended Emergency Motion (Dkt. #9), again seeking to enjoin the foreclosure proceedings at the Property scheduled to take place on February 5, 2019 (Dkt. #9 at p. 1). On February 1, 2019, the Magistrate Judge entered a Report and Recommendation recommending denying Plaintiff's request for injunctive relief (Dkt. #13). On February 13, 2019, after the date Plaintiff advised foreclosure was to occur, Defendants appeared in this case, filing a response in opposition to Plaintiff's requested injunctive relief and

also a request to consolidate this and another related case filed by Plaintiff (Dkts. #14; #21). On that same date, Plaintiff filed her “Motion to Continue,” containing her “Written Objections on Report and Recommendation of United States Magistrate Judge” (“Plaintiff’s Objection”) (Dkt. #20). On March 6, 2019, Defendants notified the Court that “[a] foreclosure sale of the Property was held on February 5, 2019, at which Stearns Lending purchased the Property” (Dkt. #30 at p. 1).

The Court has thoroughly analyzed Plaintiffs’ filings in light of the entire record. As required by Title 28 U.S.C. § 636(b)(1)(c), the Court has conducted an independent review of the entire record in this cause and has conducted a *de novo* review with respect to those matters raised by the objections. After due consideration, the Court is of the opinion that the underlying findings and conclusions of the Magistrate Judge are correct.

Notwithstanding, subsequent to entry of the Magistrate Judge’s Report, the foreclosure sale of the Property proceeded on February 5, 2019, Plaintiff’s requested relief is now moot; Defendants have already foreclosed upon the home. *See Smitherman v. Bayview Loan Servicing, LLC*, 727 F. App’x 787, 791 (5th Cir. 2018) (“The issues relating to the injunctive relief in this appeal are moot because Bayview has already foreclosed upon the home and sold the property to a third party). As a result, the undersigned herein adopts, only in part, the Magistrate Judge’s Report and Recommendation (Dkt. #13), finding that because Plaintiff’s requested relief is now moot it must be denied. Accordingly,

**IT IS THEREFORE ORDERED** that Plaintiff’s Amended Emergency Motion (Dkt. #9) and Motion to Continue (Dkt. #20) are each **DENIED AS MOOT**.

**IT IS SO ORDERED.**

**SIGNED this 15th day of March, 2019.**

A handwritten signature in black ink, reading "Amos Mazzant". The signature is written in a cursive style with a horizontal line underneath it.

AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE